

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING

January 31, 2019

Gambling Control Board Conference Room
Department of Public Safety
45 Commerce Drive, Augusta, Maine

Commission Members Present: Michael Timmons, Chair, William McFarland, and Michael Graham

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, and Jaime Wood

1. Call the Meeting to Order and Introductions: Michael Timmons, Chair

2. Review and Approval of Minutes

Commissioner Graham made a motion to approve the minutes of November 1, 2018.

Commissioner McFarland seconded. Vote 3-0.

Commissioner McFarland made a motion to approve the minutes as presented of November 29, 2018. Commissioner Graham seconded. Vote 3-0.

Review and Approval of Decision and Orders

Commissioner McFarland made a motion to approve the Decision and Order for Howard Davis, Jr. as presented. Commissioner Graham seconded. AAG, Guay stated that this is a decision and order written on Howard Davis, Jr. and there was a race and he thinks there were 5 or 6 infractions, so the issue that was before the Commission the judges in particular had encouraged the appeal so that they could get the benefit of the Commissioners opinion. The issue was when you have serial violations and you have to do placement of horses. How are the judges agreeing in flexibility they have specifically around the timing and in that case, there were 2 relative infractions that required placement? Once was a horse interfering with another horse and then the second one was the subsequent horse that was interfered with went off the field and the judges had applied the rule very strictly, so it was geographic meaning that they would do the placement based on where it occurred on the track. The decision and order reflects that the judges if the infraction starts such as in the case of interference and the interference is continuing and the horse leaves the field that the decision allows the judges to use their judgement, so they're not strictly required to look at the geographic place where it started but rather they can also consider look at the full deration of the infraction. That's what the decision does and that's the clarification and the reason. He just wanted to make a comment and he would ask the Commissioners if they agree because that's what the decision and order says the judges are looking for precedent and he wanted to make sure it was right. There was another argument and another basis but the Commission did not actually overturn or grant the appeal on that. There seems to be some confusion but from a legal perspective it would appear to be confusion from a legal perspective, and that is the rule on interference requires the action if the person is going to be guilty of interference they have to cause the reaction of another driver or horse where that horse loses ground. That's the rule on interference. There seems to be a perception in the industry that if you go off the course that you have to lose ground or else you've committed a violation; and in fact, and during the deliberations it was noted that the rule on leaving the course does not require you to lose ground but rather the violation applies if there's an unfair advantage gained. That's a completely different fact pattern but there was to the extent there was a lot of deliberations the

Commission chose not to overturn that. They did not find that the horse, so in other words the decision doesn't say Mr. Davis had to lose ground it didn't say that but on the other hand it doesn't say he got an unfair advantage either. That's very clear when he listened to the tape that's not what the Commission said so in terms of clarification he hopes he got it right. Vote 2-1 (Commissioner Graham opposed).

3. 3. Adjudicatory Hearings:

AAG, Guay stated that on December 20, 2018 Justice Murphy in superior court made a ruling on the Gibbs and Grondin case which was a case that involved the former chair of the commission. This Commission had voted out a decision to not impose a purse return, and that was to say the least very controversial in large part based on legal advice not if it's fair to do it or not but legal advice that he had given to the Commission. The Department of Agriculture and he would say it's sort of an unusual move filed an appeal. As a result, they had an appeal. The department was saying they made a mistake and they should have ordered a purse return. They never actually got to the final case but they didn't have to. There were 5 motions and the way it works is before you even have the hearing, and the argument, and all that stuff people get to file a motion. The Harness Racing Commission filed a motion to dismiss the complaint and then Gibbs and Grondin also had filed a motion to dismiss the complaint. Those two motions were denied. The Department of Agriculture filed another motion, and Gibbs and Grondin also filed another motion those motions were denied as well. Our motion was granted so they kicked the appeal out of court so that is done and he believes that money has been distributed from that race at this point. Mr. Greenleaf stated that they've been told they can. AAG, Guay stated that the court found that the decision to not do a purse return essentially was the correct decision. He stated that he would need to speak to his clients during executive session to talk about the effect of this decision on prosecution of cases in the future.

a. RE: Reopening of the 2019 Race Date Assignment Hearing: Pursuant to 8 M.R.S. § 271 and MHRC Rule Chapter 19, Section 4, the Commission will take testimony on five requests to amend the race dates that the Commission awarded for calendar year 2019. The five requests are as follows:

- 1) Northern Maine Fair's application for the race days of June 29, June 30, July 1 and July 2
- 2) Bangor Raceway's request to substitute October 8 for July 2
- 3) Scarborough Downs request for the make-up days of November 14 and 21
- 4) Topsham Fair's request to move its Wednesday, August 7 afternoon date to Thursday evening, August 8
- 5) Maine Harness Horsemen's Association request for moving post times back at Bangor's Fall Meet

AAG, Guay stated that he has a draft decision and order but he will not circulate until after the hearing. He stated that all the people that made a request are here and the distribution of the notice of reopening the hearing was given to all automatic intervenors and anybody that was in the case. These are the same Commissioners that were in the previous proceeding so he will not qualify the Commissioners. If anybody has a reason they don't want one of these Commissioners to deal with this he would say this is the time to speak up. Seeing none they are qualified. AAG,

Guay asked the people of Northern Maine, Bangor, Scarborough, the Maine Harness Horsemen's Association if any of them have any objection to him being the hearing officer for this proceeding. Looking across the room he saw none. The last question to those same folks is if they have any objection to this proceeding up to this point. There were none. He asked the Commission if they wish to reopen the 2019 race date proceeding to consider the request from Northern Maine Fair's application for licensing and race dates, to also consider Bangor Raceway's request to substitute dates on its calendar and also to consider Scarborough Down's request for make-up dates and also to consider the request from the Maine Harness Horsemen's Association request from changing post times. Do the Commissioner's wish to do so. All three Commissioners agreed to reopen the proceeding. AAG, Guay stated that he would like to hear from all of the request and not separate them. Mr. Jennings agreed. AAG, Guay asked for any exhibits. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Agenda; Exhibit 3, Letter from Topsham; Exhibit 4, Email form HC Bangor; Exhibit 5, Request from MHHA; Exhibit 6, Request from Scarborough Downs; Exhibit 7, Letter from Northern Maine Fair; Exhibit 8, Application from Northern Maine Fair; Exhibit 9, Continuance and Exhibit 10, Letter from Topsham Fair to Withdraw Request. AAG, Guay asked if there were any objections to the exhibits being entered. He stated that there were no objections to the exhibits. AAG, Guay gave Lynwood Winslow his oath. He asked a series of questions to Mr. Jennings. Mr. Jennings stated that he didn't find any adverse information regarding Northern Maine Fair to hold a license. AAG, Guay stated that Northern Maine Fair was not part of the previous race date proceeding there were some external facts and in no way reflected on their ability to hold a license. Mr. Winslow addressed the Commission. He stated that it was important that they keep the tradition of harness racing alive and the tradition to keep agriculture fair alive. They decided to keep the carnival and change their dates four weeks earlier. He would ask that they grant those dates to keep it going. AAG, Guay asked the Commissioner's if they had any questions. Commissioner Timmons stated that some of the horsemen at Cumberland said it was difficult to race so far away but it appeared that you changed the post times to evening of 6:00 p.m. Have you thought if it would have a negative impact on the 6:00 p.m. post on Sunday, Monday and Tuesday? Mr. Winslow stated that it is something they put a lot of thought in and the Saturday post time had to do with a conflict in the grandstand that evening. Sunday and Monday are the exact same post times that they had last year. Tuesday, they wanted to keep that at 6:00 p.m. to keep as many nights as possible. Commissioner McFarland asked how many stalls they had to house horses overnight. Mr. Winslow stated that they have plenty of stalls for a four day meet. Commissioner Graham stated that his point of view the 6:00 p.m. is great because you can now get the bettors there. Racing in the afternoon for anybody that works you haven't got them. He's glad to see them are going at 6:00 p.m. Mr. Winslow stated that they did see a better result on those Sunday and Monday evenings. Monday will be a dollar day promotion for them. Mr. Jennings stated for 2018 that the Northern Maine Fair was one of the three fairs that for which the handle was up. AAG, Guay asked if there were any more questions for this witness. Ms. Perkins asked Mr. Winslow if he would like to host the Maine Sire Stakes. Mr. Winslow stated yes, they would. Ms. Perkins stated that they are so pleased that Northern Maine Fair is having harness racing because that is where harness racing started. AAG, Guay asked for Bangor to come up. He gave Michael Hopkins his oath. Mr. Hopkins stated that they are requesting to switch dates from July 2nd to October 8th as part of their support of Maine fair system with the recent addition of dates added to Northern Maine Fair. He's sure the Commission is aware of their struggles to get a midway. There was a conflicting date on July 2nd and they would like to remove that date from their calendar in exchange for October 8th to allow no conflict on a race date. AAG, Guay asked if there were any questions for Mr. Hopkins. Commissioner McFarland stated that he would like to make a comment. He thanked Bangor for helping out an agricultural fair in need. Mr. Hopkins stated supporting the industry. Commissioner Graham and Commissioner Timmons also thanked Bangor. AAG, Guay asked if there were anyone else who had questions for Bangor.

Ms. Patterson stated that she had a comment. AAG, Guay gave Ms. Patterson her oath. Ms. Patterson stated that Fryeburg wasn't here and they asked at the race date hearing for Bangor not to race on that day because Fryeburg races on a Sunday, and to have a day coming back on Tuesday some of those horsemen from the Bangor area won't put into Fryeburg. She just wanted to remind the Commission of that. AAG, Guay asked for any other statements, or questions or witnesses regarding request number two October 8th in lieu of July 2nd date. Next is the request from Scarborough Downs. He gave Stephen Cobbett his oath. Mr. Cobbett stated in past years they ask for make-up dates usually at the race date hearings but he failed to do so on that date. He talked with Mr. Jennings and sent him an email requesting those make-up dates as they have in the past. AAG, Guay asked Mr. Jennings if he had any questions. Mr. Jennings stated no he does not. AAG, Guay asked the Commissioners if they had any questions as to this request. Seeing none, he asked if anybody in the audience wished to take a position or ask questions. There were none. He wanted to be clear and exhibit 5's request for moving post times back at Bangor's fall meet. He stated by making this request the MHHA are essentially asking the Commission to order something so that's the way this has been framed up and he knows looking at this you may have been more of a suggestion but for the purposes of this hearing we are considering it as your request for an order. He knows that it may not what your board ultimately wanted but that's really the only way the Commission can act is by ordering so whether your board knew they were taking that step that's the way they have to frame it up. So, if you could go ahead and tell the Commission what your request is that would be very helpful. Ms. Patterson stated two meetings ago their board talked about the post time for the fall meet for Bangor Raceway they set it at 3:00 p.m. and it's just hard to get fans to the track at 3:00 p.m. and that's what they are trying to push is getting more fans back to the track for wagering and hopefully some of those fans would become owners and be involved in the industry. That's really what they were looking at is asking Bangor to reconsider their post time for the fall meet. AAG, Guay asked Mr. Jennings if he had any questions or comments. Mr. Jennings asked Ms. Patterson if she had any discussions with Bangor about this. Ms. Patterson stated she did talk with Mr. Hopkins so he would not be shocked when he saw the agenda. Mr. Jennings asked that the request is to move it back from 3:00 p.m. Ms. Patterson stated from 3:00 to 5:00. AAG, Guay asked the Commissioners if they had any questions for MHHA. There were none. He asked if anybody in the audience or any parties that wish to ask questions of MHHA. There were none. He asked Bangor to come up. Mr. Hopkins stated that he would like to explain why they chose 3:00 p.m. Their attendance was way down during the fall meet during their 5:00 p.m. post and their pari-mutuel handle was up at that time before the bigger tracks came on. He did speak with Ms. Patterson and he has reconsidered their times and they're not opposed to switching times to 5:00 to make it consistent throughout the season. It will be their job to entice more fans to come to the track at 5:00. He's sure with Ms. Patterson's help they can get the fans back at that time. AAG, Guay asked if there were any other questions or comments on this request. There were none. He stated that the statute says they give race dates for time of day so and he knows there has been some views and sort of inconsistent practice. The statute says time of day. Historically his understand the context of that is there used to be night racing at a couple of facilities and then there'd be none night racing. That distinction when the statute was put in place was sort of important for that. He's going to suggest to the Commission that the difference between 3 and 5 o'clock isn't something that needs to be absolutely specifically in the race date award. He does think that to the extent that arguable its night racing and there is day racing on the same day then you would want to make those distinctions. They said they would do it, but in terms of writing an order he's not sure they need to get to that level of detail. It's not clear to him the path to make people race at a certain time if they don't want to race at a certain time. That's not clear to him but that doesn't mean it doesn't exist. You award race dates and he supposed the way you would do that you'd award race date for a time they didn't ask for, and then they would have their option to decide whether or not they want to use that date at that time. That's not what's going to be

happening today. Just be aware to the extent it seems like it's an issue he's heard this a couple of years in a row so from an order perspective this order it's good that the parties have worked it out the order will work because of that outcome. At this point in time, is there any other comments on any of these four things before we close for deliberations. Commissioner McFarland asked if they are going to take these four items up individually when we vote or all as one. AAG, Guay stated that he is going to circulate a draft order and they can take a brief minute to read it and then you could vote on the order. If you don't like to way, the order is written that's fine but he tried to short cut it by a month so we could actually have an order today that officially gives a license that officially sets these race dates. If there are any other comments or evidence that needs to be deliberated now's the time if not, we're going to close the evidence and circulate the proposed order. Commissioner McFarland asked Mr. Hopkins with respect to the information that they received as a result of the previous meeting on the October 8th and he does recall some of that. The two days after Fryeburg that Sunday you want to race on Tuesday as your make-up date; however, he was just wondering on the following Labor Day weekend on Monday we have four straight days with no racing and you do race on the following Tuesday, Wednesday, Friday. He was wondering if they could possibly race on Friday, September 6th. Mr. Hopkins stated he would have to look into that. He doesn't know if there is something that weekend that the city has. AAG, Guay stated that it's not on the notice. This is very limited to what the notice says. Commissioner Graham stated that in another year they would like them not to race that day. AAG, Guay stated that for the record and the very unlikely event this is ever repealed, he has circulated a draft decision and order on reopening and they are going to allow the Commissioners to deliberate. He closed the evidentiary hearing. Commissioner Timmons asked the Commissioners if they had a chance to read this decision and order. He asked if they had any questions before he moved forward. There were none. He asked them to go to page 3 and he read that part of the order. He asked for a motion. Commissioner Graham made a motion to accept the decision and order on reopening. Commissioner McFarland seconded. AAG, Guay stated that he wanted to be clear there was a sidebar and he knows that you're going to vote on this, but he wanted to make it clear to everyone in the audience to the extent that anyone ever looks at this order. It doesn't say that the Commission agrees that they can't involuntary move a date. All it's saying is it's not granting that order especially in light Bangor said they are voluntarily doing it. He would like the Commissioners to make that distinction. All three Commissioners agreed. Vote 3-0.

4. **Approval of Maine Harness Horsemen's Association Annual Budget.** Title 8, Section 272-B, provides that up to 3% of the funds that are allocated to supplement purses may be paid to a statewide association of horsemen if that association prepares and approves an annual budget and submits it to the Commission. The Maine Harness Horsemen's Association has prepared and approved a budget for the Commission's consideration. Ms. Patterson from the Maine Harness Horsemen's Association stated in statute their budget needs to be presented to the Commission for approval by February 15th. She presented the budget for 2019 to the Commission. She also stated that she can explain any of the information if needed. Commissioner Timmons asked based on the information that you presented what is the percent of increase over last year. Ms. Patterson stated that they are actually lowering their funding rate to 1.66 %. Commissioner McFarland asked if the support of the agricultural fairs is that next to the last line. That has actual expenditures due to from what you budgeted in 2018 yet it was increased \$10,000 for 2019. Ms. Patterson stated yes. Commissioner Timmons asked if they need to hear more. He asked Commissioner McFarland if he was all set with this. Commissioner McFarland stated yes. Commissioner Timmons asked if anyone in the audience that would have any questions. There were none. Commissioner Graham made a motion they approve the MHHA budget for 2019. Commissioner McFarland seconded. Vote 3-0.

5. **Overview/Update of 2018 Prohibited Substances Positive Tests.** Miles Greenleaf will give an overview/update of the prohibited substance positive test results that have been reported for the 2018 race season. Commissioner Timmons asked for an update. Mr. Greenleaf stated there were no updates they are keeping this on the agenda so when new things come out they will give updates every month.

6. **Other Business**

Ms. Patterson stated that she was asked by her board to come and talk to you. Last year you changed the qualifying rule which allowed people not to have to qualify that had raced at Scarborough last fall. Mr. Cushing the president of MHHA had asked her to come and see if you would do the same thing that you did last year, and allow them to not have to qualify before racing. Commissioner Timmons stated that it was voted on by this Commission that that would be allowed and he does not believe it would be specific to just this year. AAG, Guay stated that he remembers you voting on it but he does not remember you authorizing it for every year. It might be good. Commissioner McFarland stated he thought it was at the race date hearings. AAG, Guay stated that it wouldn't hurt for you Commissioners. He stated that he thinks you can just make a motion to allow for. Commissioner Timmons stated that it's qualifying standards, and the reason that that would be done was for those people who had horses and they've been racing, and it's over the 45-day rule and it's in the rule book it has to be they would have to qualify so they granted them permission to help out with the horse population and the qualifying deal. He thinks as Commissioners they can decide right now to decide if they want to allow the race meets that are opening in March to allow horses to race without qualifying as long as they meet the standards of that track. Ms. Perkins stated that there used to be a provision in there that if you raced like in November and it wasn't just a cut blank there was a specific time that you had to have raced. Commissioner Graham stated he thought it was in December. Mr. Jennings stated that Chapter 7, Section 6 says the 45-day qualifying rule just says the Commission may modify this requirement for the first 45 days of each racing season. It doesn't really say in rule what you have to have in place. Commissioner Graham made a motion that they grant horses don't have to qualify for the Scarborough meet as long as they raced within the last 45 days of racing at Scarborough. Commissioner McFarland seconded. Mr. Jennings asked if it had to be at Scarborough. Commissioner Graham stated yes. Commissioner Timmons asked for a vote. Vote 3-0.

Commissioner McFarland asked Ms. Perkins to come up and advise the Commissioners to which Sire Stakes races will be held at Northern Maine Fair. Ms. Perkins stated June 29th the 3 year old colts and filly pacers will be going to Northern Maine and on July 2nd the 3 year old colts and filly trotters will be going to Northern Maine.

7. **Public Comment**

Don Barberino asked AAG, Guay for an update on the ADW as far as pertaining to the illegal wagering from out of state where that stands. AAG, Guay stated that he hasn't followed up on it but he had been reporting to the Commission now that he's through with the appeal with the Department of Agriculture case. He made a request to the state of Oregon he thinks in July or August of last year and this was at the direction of the Commission to get some information. What he did was go out to their website and try to find out about their licensees. In the State of Maine, we publish information about licensees depending on what agency so you can see who's licensed and other information. In Oregon that's not available but thanks to Mr. Barberino letting him know. He couldn't find any information about licensees there; but he did find information about the State of Oregon is issuing multi-jurisdictional licenses. He's not going to give a legal opinion as to whether that makes sense or not because he doesn't 100 percent understand what they are doing, so that would be like us issuing fishing licenses for not only Maine but also New Hampshire and Vermont. Good luck if you get pinched in Vermont say I got this multi-

jurisdictional license from Maine. It's not clear to him how that would work. He has specifically requested because under their rules anybody that has one of these multi-jurisdictional licenses has to identify in what state they are operating. He thought that was a relatively simple request saying can you please provide us with a list of licensees who under your rules identify that they're doing business in Maine. They have not responded. He guesses what would be good is if you redirect him to officially on your behalf ask him to follow up with the State of Oregon because it would appear that their licensing people do advanced deposit wagering out of Oregon and their having activity in Maine; and this Commission has limited powers but certainly you could ask him to reopen his investigation on that. Commissioner McFarland made a motion that they authorize their attorney Ron Guay to reopen the investigation and look into what is happening in Oregon with respect to being able to receive bets from Maine. Commissioner Graham seconded. Vote 3-0. Commissioner Graham asked where the ADW bill is at this point. Mr. Barberino stated that things were progressing relatively slowly last year but come December the Gambling Control Board approved the RFP and published it. Prior to the end of the year they received a phone call from the Governor's office to ask them to withdraw the RFP that was his understanding. AAG, Guay stated that the Gambling Control Board was very surprised because they were not asked to withdraw the RFP but rather the Bureau of Purchases withdraw the RFP, and then they didn't ask his client to whether or not they wanted to withdraw it or was it was ok. They just withdrew it. After they did it and told them they did it they actually don't know why it was withdrawn. Mr. Barberino stated that the Gambling Control Board was surprised that it got pulled but they're waiting for a directive from Governor Mills to continue the process. He sent a note to Procurement to ask where it stood. He sent a note to Mr. Champion asking where it stood. He sent 3 or 4 emails over to the Governor's office to Jeremy Kennedy to have a brief couple of minutes with him to ask him where it stood. He's going to go over to Augusta to see if he can run into Jeremy Kennedy. He's going to ask Senator Troy Jackson if he can help them move this along. AAG, Guay stated that his understanding as well from the last meeting of the Gambling Control Board is that the executive director at the Gambling Control Board was instructed by the board to expedite it as much as possible so to the extent that they've already done the work don't start from square one if you don't have to, but rather get back to the last step that's absolutely necessary. It's a very clear direction of the Gambling Control Board and they didn't appear to be very happy with this development. The Gambling Control Board has consistently acted when it has had things before it. There was a delay in rulemaking because the Governor hadn't signed off on the authorization for rulemaking. He wanted to be clear from his clients' perspective the Gambling Control Board once they had something, once it was authorized by another agency in state government they acted fairly rapidly. His observation is you have new people coming in but he understands your concern.

8. Schedule of Future Meetings:

February 14, 2019

March 7, 2019

Commissioner Graham made a motion to go into executive session to receive legal advice from their counsel regarding their responsibility under the statute. Commissioner McFarland seconded. Vote 3-0.

9. Adjourn

10:30 a.m.